

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

In re:	§	
	§	
Magelene James,	§	BANKRUPTCY
Debtor	§	CASE NO. 09-10558-SDB

CitiMortgage, Inc.,	§	
Movant	§	JUDGE SUSAN D. BARRETT
v.	§	
Magelene James,	§	CHAPTER 13
Debtor	§	
O. Byron Meredith, III,	§	
Trustee	§	
Respondents	§	

MOTION FOR RELIEF FROM STAY

COMES NOW, CitiMortgage, Inc., Movant herein, and moves this Court for relief from the automatic stay pursuant to 11 U.S.C. §362. In support thereof, Movant shows this Court as follows:

1.

The Movant is the holder of a Deed of Secure Debt ("Security Deed") which describes certain real property purportedly owned by Debtor at 2582 Baker Ridge Drive, N.W., Atlanta, GA 30318. Said real property is security for a promissory note held by Movant.

2.

Debtor filed for bankruptcy relief on 3/2/2009.

3.

The Debtor has defaulted in making payments to Movant, which have come due since the filing of the bankruptcy petition. The Debtor proposed to pay monthly payments directly to Movant beginning with the April 1, 2009 payment. Since that time, the Debtor has defaulted in payments, which were due for April 1, 2009 and subsequent months to and through the filing of this petition and the hearing of this case. Each monthly payment is in the amount of \$1,096.99, together with attorney's fees and costs having accrued due to the filing of this motion.

4.

The unpaid principal balance of \$122,530.29 is due as of the filing of this motion, as well as all other charges specified in the loan documents held by Movant and by applicable law.

5.

The Debtors' indicated market value is unknown as of the filing of this Motion.

6.

Because Debtor has demonstrated a continuing default, and the clear inability to make payments required by the loan documents and the provisions of the bankruptcy code, Movant is not adequately protected.

7.

Because the Security Deed provides that the Debtor is responsible for Movant's attorney's fees in pursuing legal action such as this, Movant is entitled to reasonable attorney's fees from the Debtor to be assessed against its secured property, under 11 U.S.C. §506(b) (unless it is shown clearly that there is no equity in the security property).

WHEREFORE, the Movant prays for an Order relieving it from the provisions of the bankruptcy stay and authorizing it to proceed with the exercise of its private power of sale and foreclosure under its Deed to Secure Debt, all in accordance with and pursuant to appropriate state statutes, for reasonable attorney's fees under 11 U.S.C. §506(b).

Respectfully submitted,
RICHARD B. MANER, P.C.

/s Richard B. Maner
Richard B. Maner
Attorney for CitiMortgage, Inc.
GA Bar No. 486588
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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of Movant's **MOTION FOR RELIEF FROM STAY and PROPOSED ORDER** electronically. Those not served electronically have been served by depositing same in the United States Mail in a properly addressed envelope to each with adequate postage thereon as follows:

Magelene James
3042 Cardinal Drive
Augusta, GA 30909-

Lauminnia F. Nivens, Esq.
416 8th Street
Augusta, GA 30901

O. Byron Meredith, III, Esq.
Chapter 13 Trustee
P.O. Box 2127
Augusta, GA 30903

This the 14th day of May, 2009.

/s Richard B. Maner
Richard B. Maner
Attorney for CitiMortgage, Inc.
GA Bar No. 486588
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Trustee	§	
Respondents	§	

ORDER

The foregoing Motion For Relief From Stay having come on for a hearing and it appearing that Movant, CitiMortgage, Inc. is entitled to the relief sought.

IT IS HEREBY ORDERED that the request seeking relief from stay be, and the same is hereby **GRANTED**.

IT IS FURTHER ORDERED, that Movant is relieved of the stay of 11 U.S.C. §362(a) and all others of this Court in this case with respect to the exercise of the Movant's rights under subject Deed to Secure Debt described in the motion.

BE IT FURTHER ORDERED that in the event a sale under power is conducted, the Movant shall pay over excess funds

SO ORDERED, this _____ day of _____, 20____.

SUSAN D. BARRETT
UNITED STATES BANKRUPTCY JUDGE

PREPARED BY:

/s Richard B. Maner

Richard B. Maner
Attorney for CitiMortgage, Inc.
GA Bar No. 486588